



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,967	10/10/2003	Sheri Lynn Baker	CFLAY.00197	1851

22858 7590 09/23/2005

CARSTENS YEE & CAHOON, LLP
P O BOX 802334
DALLAS, TX 75380

EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/683,967

Applicant(s)

BAKER ET AL.

Examiner

Sarah L. Kuhns

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 7-16 and 27-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 17-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1, 4, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Salmon Patties" in view of Ellis for the reasons set forth in the previous office action.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Salmon Patties" in view of Ellis in further view of "A Dinner Experiment" and "Dried Food Products" for the reasons set forth in the previous office action.

Claims 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Food Product Design" in view of "Salmon Patties" and Ellis for the reasons set forth in the previous office action.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of "Salmon Patties." Ellis discloses corn chips that are made from toasted, sheeted, freshly-made masa dough derived from ground whole dent corn kernels (column 2, lines 30-34), wherein the regrind has a moisture content of less than 2% by weight (column 3, lines 47-50) and an oil content of 2-30% by weight (column 2, lines 34-39). "Salmon Patties" discloses the use of ground corn chips as a food additive. As

Art Unit: 1761

such, it would have been obvious to use any corn chips, such as those of Ellis in the same manner.

Response to Arguments

Applicant's arguments, see pages 13-14, filed August 18, 2005, with respect to the rejection(s) of claim(s) 26 under 35 USC 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection was made over Ellis in view of "Salmon Patties."

Applicant's other arguments filed August 15, 2005, have been fully considered but they are not persuasive.

Applicant argues that Murray et al., U.S. Patent 3,407,070, teaches away from the use of a predominant amount of starch derived from waxy corn as a raw material for ready-to-eat food products. However, this patent was not part of the rejection and in any case is moot because Ellis teaches the use of waxy corn in ready-to-eat products.

Applicant also argues that Ellis does not address Applicant's particular problem or solution for creating a concentrated toasted-flavor additive for enhancing the toasted flavor and toasted appearance of food products. However, "Salmon Patties" was relied on as evidence that such a problem was known to one of ordinary skill in the art and had also previously been addressed in the art.

Applicant argues that Ellis teaches away from the use of dent corn in low-oil content products. However, Ellis discloses a food product comprising a blend of dent

Art Unit: 1761

and waxy corn masa and having an oil content ranging from about 2 to about 30 wt.% (column 2, lines 34-39). The claim uses "comprises" which is open-ended and there is nothing in the claim language to exclude waxy corn masa. As Ellis does teach the use of dent corn masa, the prior art still reads on the claimed invention.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700